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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
9

10 August Image, LLC

11 Plaintiff,

12 v.

13 Habit Cosmetics, LLC, et al.,

14 Defendants.
15

Case No. 2:23-cv-03003-SVW-SK

STIPULATED PROTECTIVE
ORDER

16
17 1. A. PURPOSES AND LIMITATIONS

18 Discovery in this action is likely to involve production of confidential,
19 proprietary, or private information for which special protection from public
20 disclosure and from use for any purpose other than prosecuting this litigation may
21 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
22 enter the following Stipulated Protective Order. The parties acknowledge that this
23 Order does not confer blanket protections on all disclosures or responses to
24 discovery and that the protection it affords from public disclosure and use extends
25 only to the limited information or items that are entitled to confidential treatment
26 under the applicable legal principles. The parties further acknowledge, as set forth
27 in Section 12.3 (Filing Protected Material), below, that this Stipulated Protective
28 Order does not entitle them to a file confidential information under seal; Civil Local

1 Rule 79-5 sets forth the procedures that must be followed and the standards that will
2 be applied when a party seeks permission from the court to file material under seal.

3 B. GOOD CAUSE STATEMENT

4 This action is likely to involve customer and pricing lists, and other valuable
5 commercial, financial, and/or proprietary information for which special protection
6 from public disclosure and from use for any purpose other than prosecution of this
7 action is warranted. Such confidential and proprietary materials and information
8 consist of, among other things, confidential business or financial information,
9 information regarding confidential business practices, or other confidential
10 commercial information (including information implicating privacy rights of third
11 parties), information otherwise generally unavailable to the public, or which may be
12 privileged or otherwise protected from disclosure under state or federal statutes,
13 court rules, case decisions, or common law. Accordingly, to expedite the flow of
14 information, to facilitate the prompt resolution of disputes over confidentiality of
15 discovery materials, to adequately protect information the parties are entitled to keep
16 confidential, to ensure that the parties are permitted reasonable necessary uses of
17 such material in preparation for and in the conduct of trial, to address their handling
18 at the end of the litigation, and serve the ends of justice, a protective order for such
19 information is justified in this matter. It is the intent of the parties that information
20 will not be designated as confidential for tactical reasons and that nothing be so
21 designated without a good faith belief that it has been maintained in a confidential,
22 non-public manner, and there is good cause why it should not be part of the public
23 record of this case.

24 2. DEFINITIONS

25 2.1 Action: this pending federal lawsuit.

26 2.2 Challenging Party: a Party or Non-Party that challenges the
27 designation of information or items under this Order.

28 2.3 “CONFIDENTIAL” Information or Items: information (regardless of

1 how it is generated, stored, or maintained) or tangible things that qualify for
2 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
3 the Good Cause Statement.

4 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
5 their support staff).

6 2.5 Designating Party: a Party or Non-Party that designates information or
7 items that it produces in disclosures or in responses to discovery as
8 “CONFIDENTIAL.”

9 2.6 Disclosure or Discovery Material: all items or information, regardless
10 of the medium or manner in which it is generated, stored, or maintained (including,
11 among other things, testimony, transcripts, and tangible things), that are produced
12 or generated in disclosures or responses to discovery in this matter.

13 2.7 Expert: a person with specialized knowledge or experience in a matter
14 pertinent to the litigation who has been retained by a Party or its counsel to serve as
15 an expert witness or as a consultant in this Action.

16 2.8 House Counsel: attorneys who are employees of a party to this Action.
17 House Counsel does not include Outside Counsel of Record or any other outside
18 counsel.

19 2.9 Non-Party: any natural person, partnership, corporation, association,
20 or other legal entity not named as a Party to this action.

21 2.10 Outside Counsel of Record: attorneys who are not employees of a party
22 to this Action but are retained to represent or advise a party to this Action and have
23 appeared in this Action on behalf of that party or are affiliated with a law firm which
24 has appeared on behalf of that party, including support staff.

25 2.11 Party: any party to this Action, including all of its officers, directors,
26 employees, consultants, retained experts, and Outside Counsel of Record (and their
27 support staffs).

28 2.12 Producing Party: a Party or Non-Party that produces Disclosure or

1 Discovery Material in this Action.

2 2.13 Professional Vendors: persons or entities that provide litigation
3 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
4 demonstrations, and organizing, storing, or retrieving data in any form or medium)
5 and their employees and subcontractors.

6 2.14 Protected Material: any Disclosure or Discovery Material that is
7 designated as “CONFIDENTIAL.”

8 2.15 Receiving Party: a Party that receives Disclosure or Discovery
9 Material from a Producing Party.

10 3. SCOPE

11 The protections conferred by this Stipulation and Order cover not only
12 Protected Material (as defined above), but also (1) any information copied or
13 extracted from Protected Material; (2) all copies, excerpts, summaries, or
14 compilations of Protected Material; and (3) any testimony, conversations, or
15 presentations by Parties or their Counsel that might reveal Protected Material.

16 Any use of Protected Material at trial shall be governed by the orders of the
17 trial judge. This Order does not govern the use of Protected Material at trial.

18 4. DURATION

19 Even after final disposition of this litigation, the confidentiality obligations
20 imposed by this Order shall remain in effect until a Designating Party agrees
21 otherwise in writing or a court order otherwise directs. Final disposition shall be
22 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
23 or without prejudice; and (2) final judgment herein after the completion and
24 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
25 including the time limits for filing any motions or applications for extension of time
26 pursuant to applicable law.

27 5. DESIGNATING PROTECTED MATERIAL

28 5.1 Exercise of Restraint and Care in Designating Material for Protection.

1 Each Party or Non-Party that designates information or items for protection
2 under this Order must take care to limit any such designation to specific material
3 that qualifies under the appropriate standards. The Designating Party must
4 designate for protection only those parts of material, documents, items, or oral or
5 written communications that qualify so that other portions of the material,
6 documents, items, or communications for which protection is not warranted are not
7 swept unjustifiably within the ambit of this Order.

8 Mass, indiscriminate, or routinized designations are prohibited. Designations
9 that are shown to be clearly unjustified or that have been made for an improper
10 purpose (e.g., to unnecessarily encumber the case development process or to impose
11 unnecessary expenses and burdens on other parties) may expose the Designating
12 Party to sanctions.

13 If it comes to a Designating Party's attention that information or items that it
14 designated for protection do not qualify for protection, that Designating Party must
15 promptly notify all other Parties that it is withdrawing the inapplicable designation.

16 5.2 Manner and Timing of Designations. Except as otherwise provided in
17 this Order (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise
18 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
19 under this Order must be clearly so designated before the material is disclosed or
20 produced.

21 Designation in conformity with this Order requires:

22 (a) for information in documentary form (e.g., paper or electronic
23 documents, but excluding transcripts of depositions or other pretrial or trial
24 proceedings), that the Producing Party affix at a minimum, the legend
25 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
26 contains protected material. If only a portion or portions of the material on a page
27 qualifies for protection, the Producing Party also must clearly identify the protected
28 portion(s) (e.g., by making appropriate markings in the margins).

1 A Party or Non-Party that makes original documents available for
2 inspection need not designate them for protection until after the inspecting Party has
3 indicated which documents it would like copied and produced. During the
4 inspection and before the designation, all of the material made available for
5 inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has
6 identified the documents it wants copied and produced, the Producing Party must
7 determine which documents, or portions thereof, qualify for protection under this
8 Order. Then, before producing the specified documents, the Producing Party must
9 affix the "CONFIDENTIAL legend" to each page that contains Protected Material.
10 If only a portion or portions of the material on a page qualifies for protection, the
11 Producing Party also must clearly identify the protected portion(s) (e.g., by making
12 appropriate markings in the margins).

13 (b) for testimony given in depositions that the Designating Party identify
14 the Disclosure or Discovery Material on the record, before the close of the
15 deposition all protected testimony.

16 (c) for information produced in some form other than documentary and
17 for any other tangible items, that the Producing Party affix in a prominent place on
18 the exterior of the container or containers in which the information is stored the
19 legend "CONFIDENTIAL." If only a portion or portions of the information
20 warrants protection, the Producing Party, to the extent practicable, shall identify the
21 protected portion(s).

22 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
23 failure to designate qualified information or items does not, standing alone, waive
24 the Designating Party's right to secure protection under this Order for such material.
25 Upon timely correction of a designation, the Receiving Party must make reasonable
26 efforts to assure that the material is treated in accordance with the provisions of this
27 Order.
28

1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
3 designation of confidentiality at any time that is consistent with the Court's
4 Scheduling Order.

5 6.2 Meet and Confer. The Challenging Party Shall initiate the dispute
6 resolution process under Civil Local Rule 37-1 et seq.

7 6.3 The burden of persuasion in any such challenge proceeding shall be
8 on the Designating Party. Frivolous challenges, and those made for an improper
9 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
10 parties), may expose the Challenging Party to sanctions. Unless the Designating
11 Party has waived or withdrawn the confidentiality designation, all parties shall
12 continue to afford the material in question the level of protection to which it
13 is entitled under the Producing Party's designation until the Court rules on the
14 challenge.

15 7. ACCESS TO AND USE OF PROTECTED MATERIAL

16 7.1 Basic Principles. A Receiving Party may use Protected Material that
17 is disclosed or produced by another Party or by a Non-Party in connection with
18 this Action only for prosecuting, defending, or attempting to settle this Action.
19 Such Protected Material may be disclosed only to the categories of persons and
20 under the conditions described in this Order. When the Action has been
21 terminated, a Receiving Party must comply with the provisions of Section 13 below
22 (FINAL DISPOSITION).

23 Protected Material must be stored and maintained by a Receiving Party at
24 a location and in a secure manner that ensures that access is limited to the
25 persons authorized under this Order.

26 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
27 otherwise ordered by the Court or permitted in writing by the Designating Party, a
28 Receiving Party may disclose any information or item designated

1 “CONFIDENTIAL” only to:

2 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
3 well as employees of said Outside Counsel of Record to whom it is reasonably
4 necessary to disclose the information for this Action;

5 (b) the officers, directors, and employees (including House Counsel) of
6 the Receiving Party to whom disclosure is reasonably necessary for this Action;

7 (c) Experts (as defined in this Order) of the Receiving Party to whom
8 disclosure is reasonably necessary for this Action and who have signed the
9 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

10 (d) the Court and its personnel;

11 (e) court reporters and their staff;

12 (f) professional jury or trial consultants, mock jurors, and Professional
13 Vendors to whom disclosure is reasonably necessary for this Action and who have
14 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

15 (g) the author or recipient of a document containing the information or a
16 custodian or other person who otherwise possessed or knew the information;

17 (h) during their depositions, witnesses, and attorneys for witnesses, in
18 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
19 party requests that the witness sign the form attached as Exhibit A hereto; and (2)
20 they will not be permitted to keep any confidential information unless they sign the
21 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
22 agreed by the Designating Party or ordered by the Court. Pages of transcribed
23 deposition testimony or exhibits to depositions that reveal Protected Material may
24 be separately bound by the court reporter and may not be disclosed to anyone except
25 as permitted under this Stipulated Protective Order; and

26 (i) any mediator or settlement officer, and their supporting personnel,
27 mutually agreed upon by any of the parties engaged in settlement discussions.
28

1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
2 IN OTHER LITIGATION

3 If a Party is served with a subpoena or a court order issued in other litigation
4 that compels disclosure of any information or items designated in this Action as
5 “CONFIDENTIAL,” that Party must:

6 (a) promptly notify in writing the Designating Party. Such notification
7 shall include a copy of the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order
9 to issue in the other litigation that some or all of the material covered by the
10 subpoena or order is subject to this Protective Order. Such notification shall include
11 a copy of this Stipulated Protective Order; and

12 (c) cooperate with respect to all reasonable procedures sought to be
13 pursued by the Designating Party whose Protected Material may be affected.

14 If the Designating Party timely seeks a protective order, the Party served with
15 the subpoena or court order shall not produce any information designated in this
16 action as “CONFIDENTIAL” before a determination by the court from which the
17 subpoena or order issued, unless the Party has obtained the Designating Party’s
18 permission. The Designating Party shall bear the burden and expense of seeking
19 protection in that court of its confidential material, and nothing in these provisions
20 should be construed as authorizing or encouraging a Receiving Party in this Action
21 to disobey a lawful directive from another court.

22 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
23 PRODUCED IN THIS LITIGATION

24 (a) The terms of this Order are applicable to information produced by a
25 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
26 produced by Non-Parties in connection with this litigation is protected by the
27 remedies and relief provided by this Order. Nothing in these provisions should be
28 construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party, if requested.

(c) If the Non-Party fails to seek a protective order from this Court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the Court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this Court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and

1 Agreement to Be Bound” that is attached hereto as Exhibit A.

2 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
3 PROTECTED MATERIAL

4 When a Producing Party gives notice to Receiving Parties that certain
5 inadvertently produced material is subject to a claim of privilege or other protection,
6 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
7 Procedure 26(b)(5)(B). This provision is not intended to modify whatever
8 procedure may be established in an e-discovery order that provides for production
9 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and
10 (e), insofar as the parties reach an agreement on the effect of disclosure of a
11 communication or information covered by the attorney-client privilege or work
12 product protection, the parties may incorporate their agreement in the stipulated
13 protective order submitted to the Court.

14 12. MISCELLANEOUS

15 12.1 Right to Relief. Nothing in this Order abridges the right of any person
16 to seek its modification by the Court in the future.

17 12.2 Right to Assert Other Objections. By stipulating to the entry of this
18 Protective Order, no Party waives any right it otherwise would have to object to
19 disclosing or producing any information or item on any ground not addressed in this
20 Stipulated Protective Order. Similarly, no Party waives any right to object on any
21 ground to use in evidence of any of the material covered by this Protective Order.

22 12.3 Filing Protected Material. A Party that seeks to file under seal any
23 Protected Material must comply with Civil Local Rule 79-5. Protected Material
24 may only be filed under seal pursuant to a court order authorizing the sealing of the
25 specific Protected Material at issue. If a Party’s request to file Protected Material
26 under seal is denied by the court, then the Receiving Party may file the information
27 in the public record unless otherwise instructed by the court.

28 13. FINAL DISPOSITION

1 After the final disposition of this Action, as defined in Section 4
2 (DURATION), within 60 days of a written request by the Designating Party, each
3 Receiving Party must return all Protected Material to the Producing Party or destroy
4 such material. As used in this subdivision, "all Protected Material" includes all
5 copies, abstracts, compilations, summaries, and any other format reproducing or
6 capturing any of the Protected Material. Whether the Protected Material is returned
7 or destroyed, the Receiving Party must submit a written certification to the
8 Producing Party (and, if not the same person or entity, to the Designating Party) by
9 the 60 day deadline that (1) identifies (by category, where appropriate) all the
10 Protected Material that was returned or destroyed; and (2) affirms that the Receiving
11 Party has not retained any copies, abstracts, compilations, summaries, or any other
12 format reproducing or capturing any of the Protected Material. Notwithstanding this
13 provision, Counsel are entitled to retain an archival copy of all pleadings, motion
14 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
15 deposition and trial exhibits, expert reports, attorney work product, and consultant
16 and expert work product, even if such materials contain Protected Material. Any
17 such archival copies that contain or constitute Protected Material remain subject to
18 this Protective Order as set forth in Section 4 (DURATION).

19 14. Any violation of this Order may be punished by any and all appropriate
20 measures including, without limitation, contempt proceedings and/or
21 monetary sanctions.

22
23 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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25
26
27
28

1 DATED: September 18, 2023

2
3 /s/ Benjamin F. Tookey

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12 Attorneys for Plaintiff

13 DATED: September 18, 2023

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20 Telephone: 714-641-5100

21 Facsimile: 714-546-9035

22 Attorneys for Defendant

23 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

24 DATED: September 19, 2023

25 

26 Honorable Steve Kim

27 United States Magistrate Judge

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury
 that I have read in its entirety and understand the Stipulated Protective Order that
 was issued by the United States District Court for the Central District of California
 on [date] in the case of *August Image, LLC v. Habit Cosmetics, LLC, et al.*, Case
 No. 2:23-cv-03003-SVW-SK. I agree to comply with and to be bound by all the
 terms of this Stipulated Protective Order, and I understand and acknowledge that
 failure to so comply could expose me to sanctions and punishment in the nature of
 contempt. I solemnly promise that I will not disclose in any manner any information
 or item that is subject to this Stipulated Protective Order to any person or entity
 except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
 for the Central District of California for the purpose of enforcing the terms of this
 Stipulated Protective Order, even if such enforcement proceedings occur after
 termination of this action. I hereby appoint _____ [print
 or type full name] of _____ [print or type
 full address and telephone number] as my California agent for service of process in
 connection with this action or any proceedings related to enforcement of this
 Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____